

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 170 OF 2015

EAST AFRICA GAS COMPANY LTD (EAGC LTD).....1ST PETITIONER

GAS COMPANY LIMITED (GCL).....2ND PETITIONER

-VERSUS-

NATIONAL LAND COMMISSION.....1ST RESPONDENT

KENYA RAILWAYS CORPORATION.....2ND RESPONDENT

KENYA NATIONAL HIGHWAYS AUTHORITY.....3RD RESPONDENT

CHINA ROAD AND BRIDGE CORPORATION.....4TH RESPONDENT

RULING

1. The matter before Court for determination is on costs i.e. whether the same should be awarded to the 2nd, 3rd & 4th Respondents or that an order be made that each party to bear their respective costs. The gist of the claim is that a Petition was filed on 22nd July 2015 seeking for compensation in respect of L. R Nos. MV/VI/3858, 3855, 3856, 3859, 3860, 3861, 3862, 3897, 3904, 3905, 3906, and 3907 from the Respondents.

2. The matter did not proceed to hearing on its merits having been withdrawn on account of the consent reached and filed in Court on 4th July 2017 between the Petitioner & the 1st Respondent. The Petitioner informed the Court that it was paid the compensation money in the month of July 2017 thus taking away the substratum of the case and that it would be a waste of judicial time to proceed with hearing of the matter in the circumstances.

3. The parties therefore filed written submissions addressing the Court on why the costs should or should not be awarded. The matter was withdrawn with no order as to costs as between the Petitioner and the 1st Respondent. The 3rd & 4th Respondents have submitted that they are entitled to be awarded costs of the withdrawn petition. From the submissions filed, all the parties have cited the provisions of Section 27 of the Civil Procedure Act that states that the award of costs is a discretion of the Court and that costs follow the event.

4. The Petitioner has outlined the steps he took before it filed petition to wit Demand notices were issued and responses made thereto (evidence by the letters dated 6th, 11th, 19th February 2015). The land was being acquired by 1st Respondent for use & benefit of the 2nd and 3rd Respondent for the public good while the 4th Respondent was contracted to do/carry out the works. The procedure of acquisition of private property for public use is bestowed on the 1st Respondent under Article 40 (3) of the Constitution and Section..... of the Land Act. Although the petition was withdrawn before the matter was determined on its merits, the actual process of identifying the land is vested on the 2nd and 3rd Respondents who would then instruct the 1st Respondent to carry out the compensation process. Secondly the 4th Respondent was acting on instructions of either the 2nd or 3rd Respondent in executing the works that

were already being undertaken at the time the petition was filed. There was any lapse that was done as the works started before gazettelement of the petitioner's suit parcels of land which lapse it has demonstrated by the annexing the afore stated correspondences and meetings held and pleaded in paragraph 18 of the petition. Therefore blame if any was between either of the Respondents in failing to take the steps provided in law and not to breach the rights of a person as to private property. It is my considered opinion and I so hold that the Respondents are not entitled to demand for costs from the petition in a situation that would have been resolved had the laid down procedures been followed.

5. Whether this matter should have been filed as a plaint and not a petition because it does not raise any Constitutional issues since it was for recovery of private compensation is neither here nor there at this stage. In any event it is a question of form and the same would not have been a bar to the dispute being heard had it proceeded on merits. It is a defect that would have been easily cured by the provisions of article 159 (2) (d) of the Constitution. The upshot of my decision is that any costs expended by Respondents were a consequence to their omissions and or commissions hence the Petitioner should not be made to bear the burden. In conclusion it is my finding that an order be and is hereby made that each party shall bear their respective costs of the withdrawn petition.

Dated, signed & delivered at Mombasa this 14th December 2017.

A. OMOLLO

JUDGE